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9 Asset Management, Inc., and Medical Concierge,
Inc.

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

13
14 DUAL DIAGNOSIS TREATMENT
CENTER, INC., a California
15 corporation, et al.,

16 Plaintiffs,

17 vs.

18 BLUE CROSS OF CALIFORNIA, dba
19 ANTHEM BLUE CROSS, et al.,

20 Defendants.

Case No. 8:15-cv-00736-DOC-DFM

Hon. David O. Carter

JOINT RULE 26(f) REPORT

Sch. Conf.: Sept. 24, 2018 at 8:30 am

Trial Date: None Set

21 Pursuant to Federal Rule of Civil Procedure 26(f), the following is a report
22 regarding the Conference of the parties held between Lisa S. Kantor, Alan E. Kassan
23 and Elizabeth Hopkins of Kantor & Kantor, LLP on behalf of Plaintiffs, and Eileen
24 R. Ridley and Alan R. Ouellette of Foley & Lardner LLP, Carol B. Lewis of Von
25 Behren and Hunter LLP, and Kenneth R. O'Rourke of O'Melveny and Myers LLP,
26 on behalf of the Defense Counsel Coordinating Group.

27 Counsel met and conferred to consider the nature and basis of their claims and
28 defenses, the possibilities and strategies for prompt settlement or mediated

1 resolution of the case, and to develop a proposed discovery plan considering the
2 objectives of the various parties. From that meeting the parties submit the following
3 report:

4 **1. SHORT FACTUAL SUMMARY OF THE CASE**

5 Plaintiffs are members of the Sovereign Health Group of companies, which
6 provide behavioral health treatment services to patients in California, and other
7 states. Plaintiffs allege that they provided such services to the former patients
8 identified in the Third Amended Complaint who possessed health insurance
9 coverage for some or all of Plaintiffs' services through employer-sponsored health
10 and welfare plans governed by ERISA. Such coverage was allegedly provided or
11 administered by Defendants.

12 Defendants are the ERISA-governed health and welfare plans under which
13 Plaintiffs' former patients were allegedly covered ("Welfare Plan Defendants"), and
14 the Blue Cross Blue Shield Association independent licensees that served as insurers
15 and/or administrators of these plans ("Blue Cross Defendants"). Plaintiffs are
16 alleged to be "out-of-network" providers with regard to the Blue Cross Defendants,
17 meaning that they have no direct contractual relationship. Each of the former
18 patients identified in the Third Amended Complaint is alleged to have sought
19 treatment covered by a Welfare Plan Defendant that was insured or administered by
20 a Blue Cross Defendant. Plaintiffs contend that the Defendants processed patient
21 treatment claims and then paid claim benefits directly to the patients in direct
22 contravention of the written "assignments" of benefits, of which they allegedly had
23 notice, which required payment to Plaintiffs. Defendants contend, *inter alia*, that
24 their ERISA Plan documents prohibited assignments of benefits, that Defendants
25 were not properly informed of the assignments, or that Plaintiffs were able to
26 recover the payments from their patients and are thus not owed any money, or
27 substantially less than the amounts Plaintiffs seek.

28 ///

1 **2. LEGAL ISSUES**

2 The legal issues to be decided by the Court include:

3 Plaintiffs' Legal Issues:

- 4 a) Whether Defendants violated the assignments of benefits by paying the
5 assignor-patients instead of the Plaintiff-assignees, for all of the claims
6 alleged in the Third Amended Complaint.

7 Defendants' Legal Issues:

- 8 a) Whether the plan documents prohibit the assignment of the right to
9 receive direct payment to Plaintiffs and/or specifically provide for the
10 manner as to whom covered claims will be paid.
- 11 b) Whether Plaintiffs' alleged assignments encompass the claim and relief
12 sought by Plaintiffs in the Third Amended Complaint.
- 13 c) Whether Defendants were obligated to render performance to Plaintiffs
14 under Plaintiffs' purported assignments.
- 15 d) Whether the Plaintiffs or their patients exhausted administrative remedies.
- 16 e) Whether Plaintiffs were reimbursed directly or indirectly for their services
17 or otherwise collected amounts allegedly paid to Defendants' members.
- 18 f) Whether Defendants were given sufficient notice of the existence of the
19 purported assignments and whether Defendants discharged any purported
20 obligations by making payments to members.
- 21 g) Whether Plaintiffs can substantiate the alleged entitlement to recover the
22 amounts purportedly owed where (i) there is no record of Plaintiffs' having
23 submitted claims for certain of the benefits; or (ii) the allowed amounts on
24 the particular claims are less than the amount purportedly owed.
- 25 h) Whether certain particular claims arise from health plans that are not
26 governed by ERISA.

27 **3. JOINDER OF PARTIES AND AMENDMENTS TO PLEADINGS**

28 The parties do not intend to add additional parties, and do not anticipate

1 seeking to amend their pleadings.

2 **4. ISSUES WHICH MAY BE DECIDED BY MOTION**

3 Defendants, or some of them, may decide to bring dispositive motions on the
4 legal issues set forth above, which Defendants believe may be ripe for an
5 adjudication by way of summary adjudication/judgment.

6 Plaintiffs and Defendants are working through the issues related to limited
7 discovery and hope to avoid discovery motions, but all parties reserve the right to
8 bring such motions should the same become necessary.

9 **5. SETTLEMENT DISCUSSIONS AND PROSPECTS**

10 Some of the parties have begun to discuss settlement and are developing
11 strategies for direct negotiations or mediation. All parties agree that they will
12 consider mediation in order to avoid protracted litigation and agree to private
13 mediation pursuant to Local Rule 16.4. The parties will attempt to conduct
14 mediations of the over one hundred different patient claims in this matter, and
15 anticipate that it will take approximately four to six months to conduct those
16 mediations. The parties further anticipate that some of the claim matters will not be
17 ripe for mediation until some discovery has been completed. Accordingly, the
18 parties request that no mediation cut-off date be set until they have further
19 opportunity to exchange documents and conduct informal talks amongst themselves.

20 **6. DISCOVERY PLAN AND LIMITATIONS**

21 The parties exchanged their Rule 26 Initial Disclosures on August 13, 2018.
22 With said disclosures, Plaintiffs provided Defendants the documents Plaintiffs have
23 in their possession related to each individual patient named in the Third Amended
24 Complaint, for claims that have not been dismissed since the Complaint was filed.
25 Some Defendants provided documents with their Disclosures, some did not, and
26 others are in the process of gathering documents to produce. Further, Defendants
27 made a substantial volume of plan documents available to the Plaintiffs in
28 connection with the briefing on Defendants' motions to dismiss. Plaintiffs also

1 served a simple Request for Production of Documents on all Defendants on August
2 14, 2018. Some Defendants will serve written discovery prior to the Scheduling
3 Conference.

4 Aside from the foregoing, the parties agree that this matter should not be
5 discovery intensive and hope that limited discovery will suffice. The parties
6 primarily require the exchange and/or discovery of documents and information
7 related to the assignments of benefits, notice of same, billing and collection of claim
8 benefits/payments, and ERISA Plan document provisions related to benefit payment
9 terms and benefit assignments.

10 Accordingly, all parties reserve the right to serve written discovery or to take
11 depositions concerning these matters, or other matters related thereto or that may
12 develop during the course of litigation. The parties likewise reserve all rights to
13 object to discovery and agree to meet and confer in good faith to resolve any
14 disputes should they arise concerning the appropriateness of certain categories of
15 discovery or the scope of permissible discovery.

16 **7. TRIAL**

17 This is an ERISA action, so trial will be to the Court. Plaintiffs expect 4-6
18 days of bench trial assuming the issues can be consolidated as between the
19 numerous Defendants. Defendants anticipate that the number of parties, individual
20 claims and issues will necessitate a 5-10 day bench trial. The length of trial will
21 depend in large part on how many Defendants and patients/patient claims remain in
22 the case at time of trial.

23 **8. OTHER ISSUES**

24 Because this is an ERISA matter, which will likely involve limited evidence
25 at trial, with little or no testimony from live witnesses, the parties propose that the
26 Court waive pre-trial proceedings, as such proceedings would represent an
27 unnecessary use of judicial and litigant resources.
28

9. PROPOSED DATES

Event	Date
Initial Disclosures Due	Exchanged August 13, 2018
Deadline to Conduct Mediation/Settlement Conference	To be later determined
Discovery Cut-off	Monday August 5, 2019
Motion Filing Deadline	Monday October 2, 2019
Motion Hearing Deadline	Monday, November 4, 2019
Last Day to File Opening Trial Briefs	Monday February 10, 2020
Last Day to File Responsive Trial Briefs	Monday March 9, 2020
Trial	Tuesday April 7, 2020

Respectfully submitted,

DATED: September 10, 2018

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COMPANY, dba ANTHEM BLUE CROSS
AND BLUE SHIELD, EMPIRE HEALTH
CHOICE ASSURANCE, INC., dba EMPIRE
BLUE CROSS AND BLUE SHIELD,
ROCKY MOUNTAIN HOSPITAL AND
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BLUE CROSS AND BLUE SHIELD,
ANTHEM HEALTH PLANS OF VIRGINIA,
INC., BLUE CROSS AND BLUE SHIELD
OF GEORGIA, INC., BLUE CROSS BLUE
SHIELD OF WISCONSIN, erroneously sued
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ACWA/JPIA EMPLOYEE BENEFITS
PROGRAM, BLOOMBERG L.P. HEALTH
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AND WELFARE BENEFITS PLAN, ERNST
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ENTERPRISES INC. FLEXIBLE BENEFITS
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BENEFITS PLAN, PEAK FINANCE
COMPANY GROUP HEALTH PLAN,
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LOCAL NO. 40 HEALTH FUND, THE
AEROSPACE CORPORATION GROUP
HOSPITAL-MEDICAL PLAN, THE STEAK
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PLAN and XEROX CORPORATION
WELFARE PLAN

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7 HOLDING CORPORATION; REGENCE
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9 REGENCE INSURANCE HOLDING
10 CORPORATION, SPOKANE TEACHERS
11 CREDIT UNION EMPLOYEE MEDICAL
12 & DENTAL PLAN, TRINET EMPLOYEE
13 BENEFIT INSURANCE PLAN, UNITED
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16 *Filer's Attestation: Pursuant to Local Rule 5-4.3.4(a)(2)(i), Alan E. Kassan hereby*
17 *attests that all other signatories listed, and on whose behalf the filing is submitted,*
18 *concur in the filing's content and have authorized the filing.*
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